IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 121 OF 2004

Dharma Krishna Bhoye .... Appellant.
V/s (Orig.accd.)
The State of Maharashtra ....
Respondents.

Mr.S.A.Ingawale, Adv. for the appellant.

Mr.V.B.K.Deshmukh, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, J.

17th Nov., 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by order dated 13.8.2003 passed in Sessions Case No.39 of 2003 by the Additional Sessions Judge, Khed the appellant named above has preferred this appeal on the grounds mentioned in the memo of appeal as also those canvassed before us.

2. On 17th November 2006 this appeal was called out for hearing Shri Ingawale advocate appearing on behalf of the appellant was unable to attend the hearing as he was busy with some other Court. Since no such request was made on his behalf we proceeded to consider the appeal on merits with the assistance of the learned additional public prosecutor, scrutinized the evidence, reappreciated it and closed the case. Immediately thereafter Shri Ingawale, advocate

came and informed us that he was prevented by sufficient cause while reaching to the Court when the appeal was taken. He submits that he be heard in the matter. Since the matter was already closed we requested him to file written submissions instead of making oral submissions. Accordingly he has filed his written submissions. We have to consider the same along with submissions earlier made by the learned public prosecutor. As already noted we have reappreciated the evidence on record with the assistance of the additional public prosecutor. We will deal with the contentions raised by the learned advocate appearing for the appellant in the course of discussions by the evidence on record.

3. The prosecution story stated briefly is that the accused and the victim were married and were staying together in village Kudawale, Taluka Dapoli District Ratnagiri. They had a daughter from this marriage aged 9 years at the relevant time and two sons. The accused was always abusive to his wife and used to take exception for everything done by her which was not of his likelihood and was for all possible reason used to ill treat the wife.

4. On 30.6.2002 in the evening the victim wife was watching movie on television when the accused came in the house and scolded her for watching television. He then abused her and dragged her in the kitchen, poured kerosene on her body and put her on fire. He then

went out, came back, took the wife to the hospital. In the process he also sustained burn injuries on his hands and face. In view of the statement made by the wife the accused was arrested and prosecuted. Charge sheet was filed. The prosecution examined six witnesses to prove its case and the learned trial Judge on appreciation of this evidence came to the guilt as aforesaid which resulted in the impugned order. It is this order challenge to which is now under our consideration.

5. PW1-Leelachand Chavan is the panch witness. He witnessed the execution of arrest panchnama and he has deposed before the Court that when he saw the accused being arrested there were burn marks on the person of accused as also had partially burnt hands. He has stated that the panchnama was executed in his presence and what it points out is true to his knowledge and therefore scribed his signature to the panchnama. The testimony of this witness is assailed by Shri Ingawale, that presence of burn injuries on the person of the accused disprove the prosecution case that it was the accused who put her on fire. We are unable to accept this submission for the simple reason that the accused did put her to fire and then realised the gravity of his act which resulted in trying to save her and prompted him to hospitalize her. Merely because he has done that it cannot be said that the entire story of the prosecution is falsified.

6. PW2-Yogesh Rangale is another panch witness who was witness to execution of other panchnama. He has deposed before the Court as to what exactly transpired when this panchnama was executed. The document panchnama disclosed that a kerosene can was lying there, the place had smell of kerosene. This document therefore intrinsically supports the claim made by the prosecution that it was the accused who burnt the victim at the spot described in this document. Learned counsel for the accused Shri Ingawale had no comment to offer against testimony of this witness.

7. PW3-Vishnu Baikar is neighbour of the accused and the victim and his presence around the house of the accused -appellant was natural. He has stated before the Court that he was sitting with one person named Kadam outside his house when daughter of the appellant-accused came there and told them that her father set her mother on fire. He also deposed that he rushed to the spot, Kadam went on to inform the police in Dapoli police station. The testimony of this witness is assailed by Shri Ingawale on the ground that the said Kadam is not examined to corroborate the testimony of PW3-Vishnu. His statement that Kadam went to inform the police is not proved by production of station diary. This witness is a witness of occurrence immediately after it happened and it was told to the witness by the daughter of the victim. He is witness to what he has been told by the

daughter and what he saw. He saw the victim in burnt condition. He has stated that Kadam gave telephone call to the police station and thereafter police party arrived in ambulance. This factual testimony is not disputed. Therefore merely because station diary entry of the report made by Kadam is not produced in the Court cannot result in the entire testimony of PW3-Vishnu being disbelieved. He has been examined not as a witness to the statement made by Kadam to police but he has been examined to prove what he saw on being called by the daughter of the victim. He has stated so before the Court. He has been cross examined and there is nothing in his cross examination which will require his entire testimony being discarded. The fact that the victim was hot tempered person as contended by the learned advocate no way rebels against the factual situation of the appellant pouring kerosene on her person. It will be seen that both the husband and wife were hot tempered and ultimately temper of the husband prevailed.

8. PW4-Dr.Anuja Belose who admitted the victim in the hospital. She has deposed how the burns were there on the body of victim, she has deposed how the victim was in position to make statement and has proved her endorsement that the patient was in condition to make the statement and has proved her endorsement that the patient was in condition to make the statement in the Court. Merely because the

doctor tells in the cross examination that if injuries of the deep burns may put a patient in delirium, but there is no positive statement that the victim in this case was in delirium. The doctor has very clearly stated that the victim was conscious and in position to make statement as will be seen from the endorsement made by the doctor. The submission is therefore based on hypothesis. It has no basis in fact.

9. PW5-Pradeep Mane is the investigating officer. There is nothing in his cross examination to impeach his testimony merely because he has not taken station diary entry regarding telephone conversation the entire testimony of the witness cannot be disbelieved. Non examination of Kadam, as we have already pointed out, does not make any difference for proving the prosecution case.

10. PW6-Dr.Ajit Belose conducted the post mortem and he has proved that the death of the victim was homicidal. Damaged vocal cord and lyring does not completely stop speaking activity of any individual and therefore it may be difficult for a person so affected to talk in normal flow but it does not mean that he cannot talk at all.

11. The prosecution has thus proved beyond doubt that it was the accused who committed murder of his wife by putting her on fire. The fact remains that he was present in the house and the injuries on his person which he admits have been caused because he was trying to sacrifice. PW1-Leelachand Chavan has given eye witness account of

the happenings, medical evidence corroborates the oral testimony. In such circumstances we see no reason to interfere in this appeal. The learned trial Judge has properly marshaled the facts. He has come to the legal conclusions and has rightly convicted the accused-appellant. In the result therefore the appeal fails and is dismissed.